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EXAMINER

SHERR, CRISTINA O

ART UNIT	PAPER NUMBER
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3621

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05/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/862,502

Applicant(s)

DITTRICH, GERHARD

Examiner

Cristina Owen Sherr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is in response to applicant's amendment filed February 28, 2007. Claims 27-29 have been newly added. Claims 8-29 are currently pending in this case.

Response to Arguments

2. Applicant's arguments filed February 28, 2007 have been fully considered but they are not persuasive.

3. Applicant argues, with respect to the claims that the Shimura reference does not teach using sensors like those in the instant application.

4. Examiner respectfully disagrees. Shimura discloses:

"a vital sign sensor for measuring a vital sign, and a vital sign memory for storing the vital sign measured by said vital sign sensor, and the center terminal has a vital sign collection unit uploading the vital sign stored in said vital sign memory provided in the patient terminal which has been connected with the center terminal by the line automatic connecting unit.

The vital sign sensor may be ones which serve to grasp a physical condition of the patient, and is not restricted to the specified sensors. Typically, the vital sign sensor implies a tonometer, an electrocardiograph, a pulse measurement instrument, a clinical thermometer and the like. " (col 4 ln 23-35).

5. Such sensors measure electrical output and electrical transmission (electrocardiography) and usage by various parts of the body, as well as count frequency of certain events (pulse measurement), measure temperature (clinical

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thermometer), etc. In essence the sensors in Shimura perform functions equivalent to those of the instant application.

6. Applicant argues, with respect to the claims that the Budike reference does not disclose, teach or suggest "calculating the costs to the end customer."

7. Examiner respectfully disagrees. Budike discloses:

"in the present invention system with the internet energy platform, the plurality of energy and utility-related search engines locate pertinent information for the consumer and offer opportunities to the consumer to achieve energy savings, energy efficiencies and other useful information. These engines may include:

real time pricing,

energy transactions,

energy dispatch,

energy production,

real time energy usage,

energy usage charts,

rate analysis, and

savings strategies." (col 9 ln 39-54).

Further, Budike discloses wherein "the user confirms or selects each utility rate base for each meter--e.g. gallons per hour." (col 13 ln 38-40).

8. It would be obvious to one of ordinary skill in the art at the time the invention was made to adapt Budike to different measurements for utilities given that gallons per hour might not be the best way to measure electricity usage, or indoor temperature.

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9. Lastly, applicant argues generally that "the disclosures in the three cited references are too diverse to have any real meaning to the person skilled in the art of the invention claimed here".

10. Examiner respectfully disagrees. In response to applicant's argument that the references cited are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all three references disclose methods of measuring electrical or energy usage, temperature, usage of liquids at a distance via sensors. The electricity or temperature from a human or other living body is essentially the same as that used in a building, for example, and is measured in essentially the same manner. The fluid dynamics of a biological system follow the same principles as all other fluid dynamics, etc. Thus, it would be obvious to combine the references herein.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claims 8-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimura (US 6,176,826) in view of Budike, Jr. (US 6,904,385), further in view of Mulokey et al (US 4,661,914).

13. Regarding claim 8 –

Shimura discloses a method for providing measured values for end customers, comprising the steps of recording a measured value for a process variable using a sensor S1, S2, S3 (e.g. col 4 ln 20-35)

14. Shimura does not disclose, but Budike does, calculating the costs for the end customer on the basis of the number of the transmission operations (e.g. col 7 ln 25 – col 8 ln 55).

15. Further, neither Shimura nor Budike specifically disclose counting the number of transmission operations. However, official notice is taken that counting the number of operations is old, well known and necessary in anything having to do with monitoring and accounting as occurs in both Budike and Shimura. Specifically, you can't know what is going on, what is and how much of everything is being used, how much everyone has to be paid, etc unless you count. One example of such is in Mulokey (e.g. abs) where each address count is incremented by one after each group of bits is received.

16. It would be obvious for one of ordinary skill in the art to combine the teachings of Budike, Mulokey, and Shimura in order to more easily calculate costs to the consumer. Further, it would be obvious in any event, to utilize the readings obtained by the apparatus in Shimura in order to calculate costs, payment, amounts, etc.

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17. Regarding claim 9 –

Shimura discloses the method as defined in claim 8, wherein the data transmission between sensor S 1, S2, S3 and the process control system PLS takes place in line-conducted fashion, using, for example, a data bus system DBS (e.g. col 4 ln 20-35).

18. Regarding claim 10 –

Shimura discloses the method as defined in claim 8, wherein the data transmission between sensors S1, S2, S3 and the process control system PLS takes place by radio (e.g. abstract).

19. Regarding claims 11, 27, 28 and 29 –

Shimura discloses the method as defined in claim 8, wherein the number A is stored in the sensor S1, S2, S3 (e.g. col 4 ln 20-35). As above, however, official notice is taken that counting the number of operations is old, well known and necessary in anything having to do with monitoring and accounting as occurs in both Budike and Shimura. Specifically, you can't know what is going on, what is and how much of everything is being used, how much everyone has to be paid, etc unless you count. One example of such is in Mulokey (e.g. abs) where each address count is incremented by one after each group of bits is received.

20. Regarding claim 12 –

Shimura discloses the method as defined in claim 9, wherein the number A is stored in the sensor S1, S2, S3 (e.g. col 4 ln 20-35)

21. Regarding claim 13 –

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Shimura discloses the method as defined in claim 10, wherein the number A is stored in the sensor S1I, S2, S3 (e.g. col 4 ln 20-35).

22. Regarding claim 14 –

Shimura discloses the method as defined in claim 8, wherein the number A is stored in the process control system PLS (e.g. fig. 1).

23. Regarding claim 15 –

Shimura discloses the method as defined in claim 9, wherein the number A is stored in the process control system PLS (e.g. fig 1).

24. Regarding claim 16 –

Shimura discloses the method as defined in claim 8, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 1).

25. Regarding claim 17 –

Carrier discloses the method as defined in claim 9, wherein the measured values are transmitted over the internet from the sensor S 1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

26. Regarding claim 18 –

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Shimura discloses the method as defined in claim 10, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

27. Regarding claim 19 –

Shimura discloses the method as defined in claim 11, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

28. Regarding claim 20 –

Shimura discloses the method as defined in claim 12, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

29. Regarding claim 21 –

Shimura discloses the method as described in claim 8, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over

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the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. col 4 ln 20-35).

30. Regarding claim 22 –

Shimura discloses the method as defined in claim 9, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. abstract).

31. Regarding claim 23 –

Shimura discloses the method as defined in claim 10, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted ((e.g. col 4 ln 20-35)

32. Regarding claim 24 –

Shimura discloses the method as defined in claim 11, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

33. Regarding claim 25 –

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Shimura discloses the method as defined in claim 12, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

34. Regarding claim 26 –

Shimura discloses a method for selling measured values to end customers, comprising the steps of: recording a measured value for a process variable using a sensor S1, S2, S3; transmitting the measured value to a process control system PLS (e.g. col 4 ln 20-35).

35. Shimura does not disclose, but Budike does, calculating the costs for the end customer on the basis of the number of the transmission operations (e.g. col 7 ln 25 – col 8 ln 55).

36. Further, neither Shimura nor Budike specifically disclose counting the number of transmission operations. However, official notice is taken that counting the number of operations is old, well known and necessary in anything having to do with monitoring and accounting as occurs in both Budike and Shimura. Specifically, you can't know what is going on, what is and how much of everything is being used, how much everyone has to be paid, etc unless you count. One example of such is in Mulokey (e.g. abs) where each address count is incremented by one after each group of bits is received.

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37. It would be obvious for one of ordinary skill in the art to combine the teachings of Budike, Mulokey, and Shimura in order to more easily calculate costs to the consumer. Further, it would be obvious in any event, to utilize the readings obtained by the apparatus in Shimura in order to calculate costs, payment, amounts, etc.

38. Examiner's note: Examiner has cited particular columns and line numbers in the references as applied to the claims above the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may be applied as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Conclusion

39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

40. Holowick (US 6,710,721) discloses a radio frequency automated meter reading device.

41. Shimura et al (US 6,110,108) discloses a home care system, center terminal and patient terminal.

42. Takagi et al (US 6,535,118) discloses a priority controlled network, including accounting server.

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43. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


44. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


45. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cristina Owen Sherr whose telephone number is 571-272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

46. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew J. Fischer can be reached on 571-272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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47. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Cristina Owen Sherr
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